CANADA
Province of Nova Scotia **CR. No. 149825**

IN THE SUPREME COURT OF NOVA SCOTIA

HER MAJESTY THE QUEEN

INFORMANT

- and

GLEN EUGENE ASSOUN

DEFENDANT

SENTENCING DECISION

HEARD: at Halifax, Nova Scotia on December 13, 1999

DECISION: December 13, 1999

WRITTEN RELEASE OF ORAL: December 17, 1999

COUNSEL: **Robert W. Fetterly and Daniel MacRury** for the Crown
Duncan Beveridge, Q.C. for the Accused

HOOD, J.:

Glen Assoun was convicted by a jury of second degree murder in the death of Brenda Way. This is the date set for sentencing of Glen Assoun for that offence. Second degree murder has an automatic sentence of imprisonment for life. Section 745 and s. 745.4 of the *Criminal Code* provide for a period of parole ineligibility in the case of second degree murder of at least ten years and no more than twenty-five years as the judge deems fit in the circumstances.

Prior to today, I received the following: two victim impact statements, one from Carol Beals and one from Jane Downey. Both are sisters of the murder victim, Brenda Way. Today I have heard Carol Beals read her statement in court. I have also received a pre-sentence report on Glen Assoun. I have read the victim impact statements and heard Carol Beals this morning here in court. Their words tell quite clearly of the impact her murder had upon the family of Brenda Way and, in particular, upon her two sisters. No one can begin to imagine the effect of this terrible crime upon the family. The victim impact statements help in some way for all of us to try and understand this effect.

It is important for the court and all who were involved in this process of trial and sentencing to remember those left behind by this violent death and the effect it has had upon their lives. I have considered these statements in my

deliberations about the proper period of parole ineligibility. I thank both for the time they have taken in preparing them and in coming here today.

I will refer to information from the pre-sentence report later in this decision.

The *Criminal Code*, in s. 745.4 says as follows:

> **... at the time of the sentencing under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender ... may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.**

The leading case in this country on sentencing principles and parole ineligibility is the Supreme Court of Canada decision in R. v. Shropshire [1995] 4 S.C.R. 227. In that case, the Supreme Court of Canada said at para 27:

> **In my opinion, a more appropriate standard, which would better reflect the intentions of Parliament, can be stated in this manner: as a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that, according to the criteria enumerated in s. 744, the offender should wait a longer period before having his suitability to be released into the general public assessed. To this end, an extension of the period of parole ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.**

The Nova Scotia Court of Appeal in the R. v. Muise (D.R.) (No. 4) (1994), 135 N.S.R. (2d) 81 (C.A.) discussed a range of parole ineligibility periods. Hallett, J.A. said at p. 105:

> **Neither a sentencing judge nor this court can be expected to do more than impose a period of parole ineligibility that is within an acceptable range. One might say that the low range for the period of ineligibility for second degree murder would be somewhere between 10 and 15 years, the mid range 15 to 20 and the high range 20 to 25 years.**

The Nova Scotia Court of Appeal also in R. v. Mitchell (1987), 81 N.S.R. (2d) 57 (C.A.) reviewed the principles of sentencing and the principles of rehabilitation and deterrence and denunciation. At p. 73, Hart, J.A. said:

> **It must be kept in mind that the sentence for murder is a mandatory minimum sentence and not one which requires the trial judge to exercise his discretion in accordance with normal principles of sentencing. That privilege or responsibility, depending upon how one views it, has been taken away from the trial judge by Parliament. The trial judge has, however been given a new responsibility and that is to determine ... whether, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, the minimum period of ineligibility for parole in the case of conviction for second degree murder should be increased beyond the ten year period to as much as twenty-five years. Parliament must have considered that there were ways of committing second degree murder that would be equally serious to first degree murder and that the court should be free to ensure that the perpetrator remained in prison for an appropriate number of years.**

He continued on p. 74 as follows:

> **The object, rather, is to give back to the judge some of the discretion he normally has in the matter of sentencing - discretion that the statute took**

> **away from him when it provided for a life sentence - so that the judge may do justice, not retributive or punitive justice, but justice to reflect the accused's culpability and to better express society's repudiation for the particular crime committed by the particular accused (with that repudiation's attendant beneficial consequences for society, including its protection through individual and general deterrence and, where necessary, segregation from society) ... The emphasis clearly is not the protection of society through an assessment of the accused's future rehabilitative needs, or the likely progress of his rehabilitation ... but on the protection of society through its expression of repudiation for the particular crime by the particular accused, along with that repudiation's concomitants of individual and general deterrence.**

In R. v. Doyle (1991), 108 N.S.R. (2d) 1, Chipman, J.A. said, with respect to the role of the court, at p. 5:

> **it is not the law that unusual circumstances, brutality, torture or a bad record must be demonstrated before the judge may exercise his discretion to move above the ten years minimum. Nor is there any burden on the Crown to demonstrate that the period should be more than the minimum. It is thus for this court to determine what is fit upon a review of the factors set out in the Code, keeping in mind the protection of the public with the emphasis upon deterrence.**

In referring to the factors referred to in the *Criminal Code*, I look first at the character of the offender. The offender is 44 years of age and has had a series of relationships with women. The first, as referred to in his pre-sentence report, was a common-law relationship with Margaret Brown which lasted seventeen years, from 1972 to 1989. That relationship produced four children. After that relationship ended, there were a number of relationships and, in 1991, Mr. Assoun married J.M. to whom he remained married until 1993. It was in 1993 that Glen Assoun met Brenda Way. Just prior to Brenda Way's death, Mr. Assoun formed a

relationship with Isabel Morse which lasted until approximately April 1996. Thereafter, when he was in British Columbia, he formed a relationship with Dorothy Bersuk which lasted until trial. Margaret Brown and Mr. Assoun's son from that relationship, Glen Assoun, Jr., were interviewed for the pre-sentence report. Margaret Brown characterized the relationship as abusive and said he mistreated the children. Glen Assoun, Jr. said that Glen Assoun was violent and referred to abusiveness by his father. J.M., his ex-wife, described their relationship as scary and referred to physical, sexual and emotional abuse. She says she was very afraid of him. She also referred to him as being controlling and violent. In the pre-sentence report, Mr. Assoun's mother said that Dorothy Bersuk, the woman from British Columbia, did in fact come to Nova Scotia but returned to British Columbia.

With respect to education, Mr. Assoun completed Grade VI but later took upgrading and obtained his Grade X GED. He completed an insulation course in 1977, a heavy equipment operator's course in 1986 and a three week marine emergency disaster course. He was employed at various jobs. Mr. Beveridge made note of the fact that the pre-sentence report neglected to mention the six years that Mr. Assoun spent working on oil rigs which is apparently the longest period he remained in the same job. The pre-sentence report also referred to some two year positions, the last of which was a position with DND after which Mr. Assoun was on disability income from a motor vehicle accident.

Mr. Assoun's previous convictions are in exhibit S-1. A number of them are alcohol and driving offences, property offences and failing to appear in court. In 1986, he was convicted of assault causing bodily harm for which he received a fine of $500.00. In 1998, he was convicted of an assault with a fine of $300.00; that assault was on the daughter of Cathy Valade who testified at trial. Mr. Assoun has been described as controlling, violent and abusive and there was evidence of violence heard in the testimony at trial. There was a history of violent behaviour towards the victim and evidence about her fear of him. Mr. Assoun's mother describes him as non-violent and trying to help people but believes he has a problem with alcohol. The pre-sentence report concludes with the words, "It appears from various sources contacted that substance abuse and violence are two issues the offender must address".

The other factor that I must consider is the nature of the offence and the circumstances of the commission of the offence. The offence is second degree murder. It is difficult to imagine any murder not being described as brutal but this one was particularly so. The photographs in evidence, the autopsy report and the evidence of the doctor who performed the autopsy tell of the severe beating Glen Assoun inflicted upon Brenda Way. He struck her many times, he kicked or otherwise delivered blows to her torso, including one which ruptured her liver. As well, he stabbed and/or slit her throat and killed her with one of these throat wounds which pierced a vein. This caused her to slowly bleed to

death after he left her lying, partially clothed, on the ground in a parking lot in the early morning hours of a cold November morning four years ago.

Brenda Way and Glen Assoun had been in a common-law relationship. It was an on-again/off-again relationship punctuated by arguments and violence. They had lived together in various places, both in Nova Scotia and Alberta. The relationship had ended a short time before Brenda Way's death.

The other factor to which I am to have regard is a jury recommendation but there was no jury recommendation with respect to parole ineligibility in this case.

The Crown and the defence have jointly recommended a period of 18.5 years of parole ineligibility. As I have said, a conviction for second degree murder brings an automatic life sentence, that is a sentence of twenty-five years.

The role of the sentencing judge is therefore, as the cases say, to determine a fit period of parole ineligibility. A joint recommendation by the Crown and defence do not relieve me of the obligation to determine what is a fit period. I also note that whatever period I determine to be fit does not mean that after that time Glen Assoun will be granted parole. After that period and not before, he may apply for parole. It is then up to the Parole Board to consider if he is a suitable candidate for parole and, only if the Board so concludes, is parole granted.

I consider Glen Assoun's character and the nature and circumstances of the offence. Glen Assoun is a violent man, abusive in his marriages whether they are legal or common-law. There is no evidence of what events precipitated the vicious beating and ultimate death of Brenda Way.

In determining a fit number of years of imprisonment before eligibility for parole, I recognize the relationship between Glen Assoun and Brenda Way. Whether at common-law or pursuant to s. 718.2 of the *Criminal Code*, abuse of a spouse is an aggravating factor. Before s. 718.2 was enacted, Justice Chipman of the Nova Scotia Court of Appeal said in R. v. Doyle, *supra*, at p. 10:

> **Although Parliament has not singled out wives for special protection, sentencing jurisprudence recognizes that courts attach significance to the relationship between the perpetrator of an offence and the victim, with special emphasis on crimes involving victims in positions of vulnerability and to whom the perpetrator is in a position of trust. With respect, it is wrong to say that one cannot consider as an aggravating factor the spousal nature of this murder simply because Parliament did not specifically say it should be done. The husband/wife relationship in this case is of great importance, and is a factor to be taken into account in moving towards the upper end of the range of parole ineligibility. Family and spousal violence are all too prevalent, and if courts have not sufficiently shown their stern disapproval of such conduct the time has now come to do so. In R. v. Publicover (1986), 74 N.S.R. (2d) 23, Macdonald, J.A. speaking for this court, said at p. 24.**
>
> > **Incidents of wife beating appear to be more prevalent in our society than at one time believed. The courts have an obligation to show society's denunciation of such conduct by the imposition of sentences that primarily emphasize the element of deterrence.**

Section 718.2 of the *Criminal Code* provides, with respect to sentencing principles:

> **A court that imposes a sentence shall also take into consideration the following principles:**
>
> **(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,**
>
> **...**
>
> **(ii) evidence that the offender, in committing the offence, abused the offender's spouse or child;**
>
> **(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, ...**
>
> **shall be deemed to be aggravating circumstances;**

The section continues:

> **(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;**

I conclude that the murder of Brenda Way, in the circumstances where she had been the common-law spouse of Glen Assoun, is an aggravating factor. I do not, however, accept as an aggravating factor the breach of a position of trust between Glen Assoun and Brenda Way as submitted by the Crown. The relationship between the two had ended, although they continued to remain in contact with each other. There was no longer the sort of relationship between

them that existed in the Doyle case or others where the parties resided together or where, as in Mitchell, the offender stood in the place of a parent to a child.

I also accept that a lack of remorse is not an aggravating factor.

Considering Glen Assoun's character, the nature of his offence and the circumstances surrounding it, including the aggravating factor of the relationship between them, I conclude that 18.5 years of parole ineligibility is a fit period.

In coming to this conclusion, I am cognizant of the words of Justice Hallett in R. v. Muise at p. 103:

> **One might ask the question how does a trial judge, or for that matter an appeal court, measure with absolute accuracy the degree of horrendousness of a second degree murder for the purpose of imposing a period of ineligibility for parole that would be the only period that could be considered fit in the circumstances?**

I have also considered Justice Hallett's words in that same case, R. v. Muise, at p. 105 to which I have already referred:

> **Neither a sentencing judge nor this court can be expected to do more than impose a period of parole ineligibility that is within an acceptable range.**

I have considered the range of periods of parole ineligibility referred to me by the Crown. I note, in particular, that in Doyle and in R. v. Baillie (1991), 107

N.S.R. (2d) 256 (C.A.) the period was 17 years. In Doyle, the accused shot his wife while she was sleeping. In Baillie, the offender strangled his wife with a rope and left her in a locked basement. In R. v. Francis (1994), 127 N.S.R. (2d)) (C.A.), the offender beat the victim and strangled her. The period of parole ineligibility in Francis was twenty years. In R. v. Young (L.A.) (1993), 117 N.S.R. (2d) 166 (C.A.), the offender stabbed his wife more than twenty times in an attack characterized by the trial judge as "senseless" and "brutal".. There the period of parole ineligibility was fourteen years. Although not a case involving the death of a spouse, I refer to R. v. Picco (1987), 79 N.S.R. (2d) 139 (C.A.) where the offender beat and stabbed his victim and left him to die. On appeal, the Court of Appeal increased the period of parole ineligibility to eighteen years. In Tsyganov, [1998] N.S.J. No. 495 (C.A.), although it did not involve the death of a spouse, the parole ineligibility period was nineteen years.

THE COURT: Mr. Assoun would you please stand.

Glen Assoun, it is the sentence of this court that you serve a term of life imprisonment for the second degree murder of Brenda Way. It is the order of this court that you serve a period of 18 and one-half years from the date of arrest before being eligible for parole. It is also the order of this court that you are prohibited from possessing any firearm, ammunition or explosive substance for life.

Hood, J.